

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 1503 of 1982

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?
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DHANSUKHBHAI JAMNADAS RAJA & 4 - Petitioner(s)

Versus

MAHESHCHANDRA MORARJI CHAUHAN & 1 - Respondent(s)

Appearance :

MR DHAVAL D VYAS for Petitioner No(s).: 1,2,3,4,5.

MR DR BHATT for Respondent No(s).: 1/1 to 1/4.

Respondent No(s).: 2 UNSERVED.

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date : 18/07/2005

ORAL JUDGMENT

Notice of rule to issue upon the respondents nos.1/1 to 1/4.

Learned advocate Mr.Bhatt appears for and waives service on behalf of the respondents nos.1/1 to 1/4. Leave to delete respondent no.2.

Feeling aggrieved by the judgment and order dated 25th June, 1982 passed by the learned District Judge, Valsad in Regular Civil Appeal No.25/1981, the appellants (defendants in Regular Civil Suit No.313/1978) have preferred the present Revision Application under Section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as, "**the Rent Act**").

The respondents-plaintiffs are the owners of the suit house bearing Municipal House Nos.3726 and 3726/1 situated at Navsari. The plaintiffs inherited the suit house from their mother one Laduben. The said Laduben had leased the suit house to the defendant no.1 for the purpose of carrying on diamond cutting business. After the death of the said Laduben the suit house was inherited by the plaintiffs and one another brother Purushottambhai. The said Purushottambhai had relinquished his right in the suit house. The plaintiffs instituted Regular Civil Suit No.313/1978 in the Court of learned Civil Judge (S.D.), Navsari for recovery of possession of the suit house on the grounds that the

plaintiffs required the suit house reasonably and bonafide for their personal use and that the defendant no.1-tenant had, in contravention of the terms of tenancy, unlawfully sublet parts of the suit house to the defendants nos.2 to 5 and that he had changed the user of part of the suit house to the residence for his employees. The suit was contested by the defendants vide written statement Exh.11. The learned Civil Judge, by judgment and order dated 30th June, 1981, allowed the suit and passed decree for possession in favour of the plaintiffs. The learned Civil Judge held that the defendant no.1 had, in contravention of the terms of tenancy, unlawfully sublet parts of the suit house to the defendants nos.2 to 5 and had permitted his employees to reside in the suit house. The learned Civil Judge also held that the plaintiffs did reasonably and bonafide require the suit house for their residence and that a greater hardship shall befall the plaintiffs in case the decree for eviction were refused. Feeling aggrieved, the defendants preferred Regular Civil Appeal No.25/1981 in the Court of learned District Judge, Navsari. The learned District Judge, by impugned judgment and order dated 25th June, 1982, dismissed the Appeal. The learned District

Judge upheld the finding of reasonable and bonafide requirement of the plaintiffs and a greater hardship to the plaintiffs recorded by the learned Civil Judge. The learned District Judge, however, reversed the finding with respect to the breach of condition of tenancy and unlawful subletting to the defendants nos.2 to 5. According to the learned District Judge the defendants nos.2 to 5 were the members of the family of the defendant no.1 i.e. the father, the brother, the brother's wife and the brother's brother-in-law and they were all carrying on the same business of diamond cutting in the suit house. Feeling aggrieved, the defendants have preferred the present Revision Application.

Mr.Vyas has submitted that admittedly after the death of the original owner Laduben the suit house was jointly inherited by her sons, the defendants and one Purushottambhai. In the family arrangement the said Purushottambhai had relinquished his right, title and interest in the suit house. He has submitted that the said family arrangement was sham and bogus and ought not to have been believed. He has submitted that it has come on record that the said Purushottambhai was not residing

at Navsari. Had the family arrangement not been believed in favour of the plaintiffs no decree for possession could have been passed against the defendants on the ground of reasonable and bonafide requirement of the plaintiffs.

I am unable to agree with Mr.Vyas. Both the Courts below, having considered the evidence on record, have recorded concurrent finding that the plaintiff no.1 Maheshchandra Morarji Chauhan required the suit house for his personal residence and that he had no other house in Navsari. As to the comparative hardship, both the Courts have held in favour of the plaintiffs and against the defendants. It has come on record that the defendants do possess other properties wherein they are carrying on their business of diamond cutting and also have some other business.

In view of the aforesaid concurrent finding recorded by both the Courts below, no interference is warranted. The Revision Application is dismissed with cost. Rule is discharged. Interim relief stands vacated.

(Ms. R.M.Doshit, J.)